

REMARKS

Claims 6-9, 13-19, and 27-31 are pending. In order to streamline prosecution, and without waiver or prejudice, claims 6, 7, 9, 13, 14, 17, 19 and 27 are amended hereby and claims 10, 11, 20-26, 32, 33, and 36-41 are canceled (claim 12 is also canceled without waiver or prejudice, but it was previously withdrawn in view of election requirements interposed by Examiner). As a result, the only independent claims still pending in this case are claims 6 and 27.

Prior to the present Amendment, all then-pending claims (namely claims 6-11, 13-33 and 36-41) stood rejected as follows:

Claims 20 and 36 were rejected as anticipated over Geschwind U.S. Patent No. 5,121,864 ("Geschwind");

Claims 6, 9, 20, 36 and 39 stood rejected for obviousness over either Watkins U.S. Patent No. 2,295,143 ("Watkins") or Calciano U.S. Patent No. 5,638,955 ("Calciano") in view of Harden U.S. Patent No. 6,533,111 ("Harden");

Claims 13-16 and 21-23 were rejected for obviousness over "the references as applied to claims 6 and 20 above, and further in view of Schneck" U.S. Patent No. 6,338,572 ("Schneck");

Claims 7, 8, 10, 11, 26-29, 32, 37, 38, 40 and 41 were rejected for obviousness over "the references as applied to the claims above, and further in view of Huffer" U.S. Patent No. 5,499,713 ("Huffer");

Claims 17, 18, 24, 25, 30 and 31 were rejected for obviousness over "the references as applied to claims 13, 22 and 27 above, and further in view of Tzeng" U.S. Patent No. 6,471,056 ("Tzeng"); and

Claim 33 was rejected for obviousness over Tzeng in view of Harden.

At the outset, Applicant notes some confusion as to just what art Examiner is applying when reference is made to "references as applied above" for there is no clear consistency. Applicant would ask that, should any further rejections be made, the art relied upon be specifically identified in each rejection so that matters can be more expeditiously addressed.

Turning to the merits, and while Applicant does not necessarily agree that any of the rejections are proper, in order to streamline prosecution, and without waiver or prejudice, Applicant has reduced the number of claims pending in the case, and has amended many of them, including the independent claims, to more sharply focus Examiner's attention on certain clear distinctions between the claimed invention and the cited art. To that end, the rejection of claims 20-26, 33, and 36-41 are submitted to be moot, as those claims have been canceled. The following comments focus on the claims that remain, and particularly remaining independent claims 6 and 27.

The present invention is directed to a disposable cover for a patient bed hand control box. Those boxes are typically adapted to be used by a person on a bed, such as a hospital bed. An example might be a television control box that lies next to the patient with a speaker, for example, and possibly some buttons to be manipulated by the patient. As Examiner will appreciate, a great many different people use the same hospital bed over time, and so the patient bed hand control box can present a significant infection control problem as the bed changes over from patient to patient. Unless the patient bed hand control box is switched out between patients, there is a risk of transmission of infections or other problems from the previous to the next patient(s) via the box as each successive patient uses the same box (or when hospital staff or other caregivers handle the box). Nor is it believed viable for hospitals to fully sterilize such boxes between patients, at least not without significant drawbacks in terms of cost and success.

One approach which Applicant understood may have been used in some hospitals was to simply insert the box into a baggie. The boxes have a cord extending therefrom, and so it would then be necessary to "bunch up" the open end of the baggie about the cord, and then tie it closed with a tie strip or similar structure provided with the baggie. Bunching up the top of the bag was somewhat of a nuisance, and could create areas, like

pleats, where fluid could settle and hide. The ties presented additional drawbacks, especially because they were separate items that had to be handled and maintained. After use, to remove the bag meant the medical provider had to undo the tie, which was not always easy, and presented a disposal and handling issue with not only the baggie, but the tie. As a result, it is submitted that the baggie approach was not widely adopted.

The present invention was developed to provide an easy-to-use and reliable system for maintaining infection control for patient bed hand control boxes. To that end, the cover can be loaded like a baggie (merely insert the control box into the cover with the cord sticking out), but the construction of the claimed cover avoids the drawbacks that were encountered with baggies. Instead, the cover has a flap portion that can fold neatly over the opening to confront the other side of the cover. An adhesive strip on the flap adheres to that other side of the cover to finish the set-up, all without bunching up into pleats. The present invention further includes a tear line in the flap, so that the flap can be separated into ears that go around the cord, so the cord can extend up along a centerline. The adhesive is on either side and/or extends across the tear line, so that each ear can be folded down to the other side of the cover, surrounding the cord, and adhere to finish the set up. The baggie had no such simple advantage. Further, on removal, the cover can simply be torn open and disposed of without worrying about extra components or even fluid spatter from pleats at the cord.

The advantages of the present invention are reflected in the structural features of the cover as claimed. In that regard, claim 6 has been amended to incorporate some of the subject matter of dependent claims 7 and 9 and previously-independent claim 13.¹ Thus, claim 6 has been amended to include the flap portion that folds over from claim 9, the adhesive thereon from claim 7, and the tear line from claim 13. Similarly, claim 27 has been

¹ Claim 13 has been rewritten as a dependent claim from claim 6, and claims 7 and 9 have been amended to reflect the addition of aspects of their subject matter into claim 6.

amended to incorporate some of the subject matter of independent claim 32 (which has now been canceled) as well as some aspects of claim 9 so as to have one panel taller than the other to define the flap portion and to place the tear line in the flap portion. As a consequence, it is understood that Examiner would look to the art applied to those claims before, namely, Watkins or Calciano, in view of Harden, Schenk and Huffer. Applicant submits that such art fails to establish a *prima facie* case.

More pointedly, Examiner turns to art that simply does not deal with the kinds of problems that the present invention aims to solve. Thus, Examiner cites a textile article carrier (Watkins) or a hair curler container (Calciano) solely because they show a container into which a corded device might be inserted. But those devices are vastly different from the presently claimed invention. For example, both are designed to be reusable, and so have pre-formed ears, rather than a tear line of a flap. Moreover, each ear is held in place when closed by a re-usable fastening arrangement such as snaps (in Watkins) or Velcro (in Calciano). The essence of those devices is that they are to be opened and closed numerous times over their useful life. By contrast, the presently claimed cover is a use-once-and-throw-away device. The adhesive all but ensures that result for once it adheres to close the flap or ear(s) thereof, reopening essentially destroys the bag for further use.

The other art cited by Examiner, Harden, Schneck and Huffner, add nothing to the equation. Harden, like Watkins and Calicano, is directed to a reusable device. In Harden, the device receives a key fob or the like therethrough, but it is not shown to hold a corded device with the cord projecting out. Indeed, the opening is always open, and is simply held together by a key ring. But the open top of Harden has no ears or a flap to fold over and close the opening.²

² Apparently, Examiner cited Harden merely for the proposition that the containers of Watkins or Calciano could be panels adjoined at the edges. It is not clear that they do not already have such construction. In any event, it is submitted that the issue need be addressed at this time.

In view of the above deficiencies, Examiner relies on Schenk and Huffer.

Schenk is an industrial bag, and certainly would not be useful in the context of a cover for a patient bed hand control box. In any event, Schenk is for a disposable item, whereas Watkins and Calciano are reusable and with pre-bifurcated ears. There is simply no reason one would go back and change Watkins or Calciano to have a flap with a tear line. Those devices require the separate parts. Nor has Examiner shown how one would or could modify the structure of those items, given their materials, to utilize a tear line. Indeed, the tear line might well rip unevenly thus destroying the value of the device to those who intend to carry it about with them. Not a good result. At bottom, Applicant submits that Schenk would not be combined with Watkins or Calciano as there would be no purpose served in doing so (other than to recreate the present invention with the advantage of hindsight, which is legally impermissible).

Also, while Huffer does disclose a cover that can receive an electronic device therein, and uses adhesive to hold a flap closed over the opening, Huffer is itself deficient in many respects. For example, the device of Huffer does not show it holding a corded box, hence, it does not deal with the problem of closing the opening therearound. Further, there is no tear line, nor even a need for one as there is no cord to deal with. In any event, Applicant submits that Huffer would not be combined with Watkins or Calciano in order to replace the reusable closures with adhesive as that would render the devices of Watkins and Calciano useless for their intended purpose. It can hardly be said to be obvious to modify a reference to destroy an essential functional characteristic of the device disclosed. Rather, as with Schenk, it is submitted that such a result could only be supported here by reliance on impermissible hindsight. To that end, other than to pick and choose various incompatible pieces of prior art to recreate the claimed invention after the fact, it is submitted that

Examiner cannot show why anyone would change a reusable device to destroy its ability to open and close repeatedly over an expectedly long useful life.

In view of the foregoing, Applicant respectfully submits that the claims as now pending clearly distinguish over the art, and should be allowed.³

Conclusion

Applicant submits that all outstanding issues in the Official Action have been addressed. Applicant thus respectfully solicits a formal Notice of Allowance at the earliest opportunity. If any issues remain, Examiner is respectfully asked to telephone undersigned attorney in an effort to promptly resolve same.

No fee other than for the third month extension of time (which is being paid concurrently with the filing hereof) is believed due for this paper. If any other fee is due, please take this as authorization to charge same to our Deposit Account 23-3000.

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.

By: /kurt l grossman/
Kurt L. Grossman
Reg. No. 29,799

411 Vine Street
2700 Carew Tower
Cincinnati, OH 45202
(513) 241-2324
(513) 241-6234 (fax)

³ Applicant has not addressed all distinctions which may apply as it is not believed necessary to do so at this time. Further, while it is submitted that the dependent claims are also patentable in their own right, in order to streamline prosecution, and in view of what is submitted to be clear patentability of the independent claims, Applicant has not submitted separate arguments in support of the dependent claims, but reserves the right to do so should that become necessary. Applicant thus reserves, and does not waive, the right to present other or additional arguments in support of patentability of the claims should that become necessary.